



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R8-ES-2012-0001]

[4500030113]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Thermophilic Ostracod as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 90-day finding on a petition to list the thermophilic ostracod (*Potamocypris hunteri*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition does not present substantial information indicating that listing the thermophilic ostracod may be warranted. Therefore, we are not initiating a

status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the thermophilic ostracod or its habitat at any time.

DATES: The finding announced in this document was made on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R8-ES-2012-0001. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Klamath Falls Fish and Wildlife Office, 1936 California Avenue, Klamath Falls, CA 97601. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Laurie Sada, Field Supervisor, Klamath Falls Fish and Wildlife Office (see **ADDRESSES**), by telephone at 541-885-2507, or by facsimile to 541-885-7837. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On March 8, 2011, we received a petition dated March 4, 2011, from Chris Zinda (Friends of Hunter’s Hot Springs) and Drs. Brendan Bohannon and Richard Castenholz

(University of Oregon) requesting that the thermophilic ostracod (*Potamocypris hunteri*) be listed as endangered or threatened under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). In a May 4, 2011, letter to the petitioner, we responded that we had reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that we were required to complete a significant number of listing and critical habitat actions in Fiscal Year 2011 pursuant to court orders, judicially approved settlement agreements, and other statutory deadlines, but that we had secured funding for Fiscal Year 2012 and anticipated publishing a finding in the **Federal Register** in 2012. This finding addresses the petition.

Evaluation of Listable Entity

Section 3(16) of the Act defines the term “species” to include “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” Entities that meet the Act’s definition of a “species” can be considered for listing under the Act and are, therefore, referred to as “listable entities.” Listable entities can then be listed if they are determined to meet the definition of an endangered species or a threatened species. Prior to making a determination of whether the petition presents substantial information to indicate whether listing may be warranted, we must address the question of whether the petition presents substantial information to indicate whether the petitioned thermophilic ostracod may be a

listable entity. We may consider the petitioned ostracod to be a listable entity if information submitted with the petition or in our files indicates that treatment of this ostracod as a listable entity may be warranted. Based on the information presented in the petition and information in our files, there is a considerable amount of uncertainty regarding the taxonomy of this entity. The following paragraphs present our evaluation of whether *Potamocypris hunteri* may be a listable entity.

Wickstrom and Castenholz (1973, p. 1063) reported finding what they considered to be a new undescribed species of *Potamocypris* at Hunter's Hot Springs (Hunter's) in southeastern Oregon. The Latin name *Potamocypris hunteri* was coined in a footnote in 1973, but not accompanied by a formal description (Wickstrom and Castenholz 1973, p. 1064). Wickstrom and Castenholz (1973, p. 1064) stated that a formal description was forthcoming, and suggested that the animal might be the same as *P. perbrunnea*, which is discussed in Brues' (1932, p. 222) paper. However, Wickstrom and Castenholz (1973) did not provide any description, diagnosis, or references to specimens, and the animal was not formally described. Thus, *P. hunteri* is a nomen nudum (a species lacking a formal scientific name) with no standing. However, the Service will consider a taxon for listing that lacks a formal name if there is credible scientific evidence indicating that the taxon constitutes a listable entity as a species or subspecies under section 3(16) of the Act.

Additionally, the petition provides documentation of an ostracod named *Thermopsis thermophila*, which was validly published with a complete description and

notes on the habitat (Külköylüoğlu *et al.* 2003, pp. 114–115). Külköylüoğlu *et al.* (2003, p. 114) established the species in a new genus, recognizing that the generic diagnosis is provisional. They provided a description and diagnosis for distinguishing *Thermopsis* from *Potamocypris* and several other related genera (Külköylüoğlu *et al.* 2003, pp. 114–115). The species description was based on collections from northern Nevada. Külköylüoğlu *et al.* (2003, p. 122), in referring to additional *Potamocypris* taxa that have been observed, stated: “We strongly suspect *Potamocypris perbrunnea*, *P. varicolor*, *P. hunteri*, and above all Wickstrom and Castenholz’ (1973, 1985) *Potamocypris* sp. to be identical to *Thermopsis thermophila*.” The authors made this conclusion due to the lack of taxonomic indications and verifications for the generic *Potamocypris* standing of these species (Külköylüoğlu *et al.* 2003, pp. 121–122). The authors clearly considered all of these undescribed taxa to be conspecific with (i.e., belonging to the same species as) their *T. thermophila*, although here the petition paraphrased this statement as “...the similarity was suggested” (Zinda *et al.* 2011, p. 5).

The petition does not provide generic descriptions, nor does it provide any other morphological, ecological, distributional, genetic, or other differences to distinguish the petitioned entity from thermophilic ostracods in other hot springs throughout the Great Basin, including *Thermopsis thermophila*. This information could indicate whether the petitioned *Potamocypris hunteri* is endemic or qualifies as a listable entity even if it lacks a validly published name, but no description data were provided, nor are any available within our files. The description provided by the petition, within references cited, or within our files for *P. hunteri* consists only of the location where the animal is found and

reference to its ability to withstand 49 degrees Centigrade (°C) (120 degrees Fahrenheit (°F)) (Zinda *et al.* 2011, p. 5).

In summary, our review of the information supplied with the petition and in our files indicates there is a great deal of taxonomic uncertainty surrounding *Potamocypris hunteri* as evidenced by the 1932, 1973, and 2003 papers (Brues 1932, p. 222; Wickstrom and Castenholz 1973, p. 1064; Kulköylüoğlu *et al.* 2003, pp. 114–115). Our general practice in recognizing a currently undescribed taxon as a possible listable entity is, at a minimum, to have the scientific community recognize the taxonomic validity of an entity, even if a formal taxonomic treatment has not been published. In this case, there is no information that would indicate that *Potamocypris hunteri* is a recognized taxon in the scientific community. Therefore, the information in the petition and in our files does not present substantial scientific or commercial information to indicate the petitioned *P. hunteri* may be a listable entity. Consequently, we will not proceed with an evaluation of the five factors described in section 4(a)(1) of the Act. Although we will not review the status of the petitioned entity at this time, if you wish to provide additional information regarding the thermophilic ostracod, you may submit your information or materials to the Field Supervisor, Klamath Falls Fish and Wildlife Office (see **ADDRESSES**), at any time.

References Cited

A complete list of references cited is available on the Internet at

http://www.regulations.gov and upon request from the Klamath Falls Fish and Wildlife Office (see **ADDRESSES**).

Authors

The primary authors of this notice are the staff members of the Klamath Falls Fish and Wildlife Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 6, 2012

Rowan W. Gould

Deputy Director, U.S. Fish and Wildlife Service

Billing Code 4310-55-P

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